IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2167 OF 2007
IN
SUIT NO.1565 OF 2007

Vipul Mathurdas Thakker. ..Plaintiff.

V/s.

Pankaj Arjun Chothani. ..Defendant.

Ms.Rajni Iyer, Sr.Advocate a/w Mr.Chirag Balsara i/b. Thakor Jariwala & Associates for Plaintiff.

Mr.Vatsal Shah, Mr.Yatin Shah for Defendant.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 14, 2007.

P.C. :

1. The principal relief claimed in the Suit is for direction against the Defendant to return original documents referred to in prayer clause (a) of the Suit. It is not necessary to advert to all the circumstances, which resulted in filing of the present Suit.

2. Suffice it to observe that when this matter came up for hearing on 5th June, 2007, after hearing the Counsel for the parties, I have recorded statement of fact in that order, which is founded on the submission made by the Counsel for the Defendant on instructions. At the relevant time, the Advocate for the Defendant had argued that the Plaintiff would

owe Rs.15 Lakhs to the Defendant. However, the Plaintiff's Counsel disputed the correctness of the claim of the Defendant. Nevertheless, to bring quietus to the entire controversy, it was suggested to the Plaintiff to deposit amount of Rs.15 Lakhs in this Court, so that the same can be made over to the Defendant to settle all the claims to the extent of outstanding amount. At the same time, the Defendant was directed to deposit Original documents in the Court. The defendant has already abided by that direction. Similarly, the Plaintiff has deposited sum of Rs.15 Lakhs in this Court. Now the only further direction, which is required, is to permit the Plaintiff to withdraw the Documents and allow the Defendant to withdraw Rs.15 Lakhs towards full and final settlement of his claim. However, now the Defendant has changed his stand and would contend that the Defendant would be entitled for much more amount than sum of Rs.15 Lakhs. Different calculations have been put across on behalf of the Defendant to support that position. It is not necessary for me to enter into that controversy.

3. For the time being, the Motion under consideration will have to be disposed of leaving all the questions regarding correctness of the claim of the Defendant open, to be considered in the event,

the Defendant was to file counter claim, if so advised.

4. Accordingly, the Plaintiff is permitted to withdraw the original documents deposited in this Court by the Defendant. The Defendant is allowed to withdraw the sum of Rs.15 Lakhs deposited by the Plaintiff in this Court, on the understanding that it is towards full and final settlement of claims.

5. The Defendant, if so choses, may file counter claim for further amount, if any, within four weeks from today, which proceedings will be considered on its own merits in accordance with the law. If no such claim is filed within four weeks from today, it will be assumed that the Defendant has no further claim against the Plaintiff and the Suit can be finally disposed of on that basis.

6. Needless to observe that if counter claim is filed by the Defendant, it will be open to the Plaintiff to contest the same, which will be decided on its own merits in accordance with the law.

7. Notice of Motion disposed of on the above terms.

(A.M.KHANWILKAR,J)